

Sixty-second
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to amend and reenact sections 34-15-01 and 34-15-03, and subsection 3
2 of section 34-15-05 of the North Dakota Century Code, relating to reporting of hiring of
3 independent contractors.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 34-15-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 34-15-01. Definitions. As used in this chapter:

8 1. "Contractor" means an individual, or organization owned exclusively by an
9 individual, who is hired to provide services for or on behalf of an employer in the
10 course of the employer's trade or business, if the aggregate payment for the
11 services [is sufficient for the employer to be required to file an internal revenue
12 service form 1099-MISC or substantially equivalent form] [exceeds ____ dollars].

13 2. "Department" means the department of human services.

14 ~~2.3.~~ "Employee" means an individual who would be determined to be an employee
15 under chapter 24 of the Internal Revenue Code of 1986, as amended [26
16 U.S.C. 3401 et seq.], but does not include an employee of a federal or state
17 agency performing intelligence or counterintelligence functions, if the head of
18 the agency has determined that reporting under this chapter, with respect to that
19 employee, could endanger the safety of the employee or compromise an
20 ongoing investigation or intelligence mission.

21 ~~3.4.~~ "Employer" means ~~an entity or individual;~~

22 a. A person who would be determined to be an employer under section 3401(d)

1 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and
2 includes any governmental entity and any labor organization; or
3 b. A person who hires a contractor.

4 4.5. "Labor organization" means an organization treated as a labor organization
5 under section 2(5) of the National Labor Relations Act, as amended [29 U.S.C.
6 152(5)], and includes any entity, including a "hiring hall", which is used by the
7 organization and an employer to carry out requirements, described in section
8 8(f)(3) of the National Labor Relations Act, as amended [29 U.S.C. 158(f)(3)], of
9 an agreement between the organization and the employer.

10 **SECTION 2. AMENDMENT.** Section 34-15-03 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **34-15-03. Employer reporting.**

- 13 1. Except as provided in subsections 2 and 3, each employer shall furnish to the
14 directory of new hires a report that contains the name, address, and social
15 security number of each employee or contractor newly hired for work within this
16 state, and the employer's name and address and the identifying number
17 assigned under section 6109 of the Internal Revenue Code of 1986, as
18 amended [26 U.S.C. 6109], to the employer.
- 19 2. An employer who has employees or contractors who are employed or hired in
20 two or more states, and who transmits reports magnetically or electronically, may
21 designate one state in which the employer has employees or contractors and
22 may transmit a report conforming to subsection 1 to that state. An employer who
23 reports pursuant to this subsection must notify the secretary of the United States
24 department of health and human services, in writing, of the state so designated.
- 25 3. Any department, agency, or instrumentality of the United States shall transmit a
26 report, conforming to subsection 1, to the national directory of new hires
27 established pursuant to section 453 of the Social Security Act [42 U.S.C. 653].
- 28 4. a. Except as provided in subdivision b, a report required under this section must
29 be made no later than twenty days after the date the employer hires the
30 employee or contractor.
- 31 b. If the employer transmits reports magnetically or electronically, a report
32 required under this section may be made by two monthly transmissions, if

1 necessary, not less than twelve nor more than sixteen days apart.

2 5. An employer is not required to report a contractor under this section if the
3 services are provided in response to an emergency [or if the services are not
4 expected to be provided on a recurring basis].

5 **SECTION 3. AMENDMENT.** Subsection 3 of section 34-15-05 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 3. An employer who, by agreement between the employer and employee or
8 contractor, fails to file a timely, complete, and correct report required under this
9 chapter or files a false or incomplete report is liable for a civil money penalty of
10 two hundred fifty dollars for each failure to report or each false or incomplete
11 report.